

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES A. WILSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 05-399-JJF
)	
STANLEY TAYLOR, et al.,)	
)	
Defendants.)	

**STATE DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME**

COME NOW, Stanley Taylor, Rick Kearney and Michael Deloy ("Defendants") by and through their undersigned counsel, and hereby move this Honorable Court, pursuant to Fed.R.Civ.P. 6(b), to enter an Order granting Defendants an enlargement of time within which to respond to Plaintiffs' Discovery Requests in the above-captioned case. In support of this motion, Defendants offer the following:

1. The Plaintiffs, who number nine in total, are inmates incarcerated and under the supervision of the Delaware Department of Correction ("DOC") housed at the Sussex Correctional Institution ("SCI"), Georgetown, Delaware. Lead Plaintiff, James Wilson ("Wilson"), has since been transferred to the Delaware Correctional Center ("DCC"), Smyrna, Delaware.
2. On or about June 15, 2005, the inmate Plaintiffs commenced this action by filing a Complaint pursuant to 42 U.S.C. § 1983 alleging Fourteenth Amendment due process and equal protection violations and naming as Defendants, Warden Rick Kearney and Commissioner Stan Taylor. (D.I.#2). On or about July 18, 2005, Wilson filed an Amended Complaint. (D.I.#7). On or about October 11, 2005, by Memorandum Order,

Plaintiffs' Amended Complaint was dismissed without prejudice as frivolous pursuant to 28 U.S.C. § 1915A. Plaintiffs were given leave to file a Second Amended Complaint within twenty days of the date of the Memorandum Order. (D.I.#23). On or about October 24, 2005, Plaintiffs filed a Second Amended Complaint adding numerous defendants to the action. (D.I.#27).

3. On or about December 12, 2005, the Court issued an Order allowing the claims against Taylor, Kearney, Hollis, Mears, Hennessy, Deloy, and Stozenbach to proceed to service.

4. On or about April 18, 2006, Defendants filed a Motion to Dismiss with an accompanying Memorandum of Points and Authorities with affirmative defenses in Support thereof. On or about May 5, 2006, Plaintiff Wilson filed a Motion to Amend the Pleadings. On or about June 8, 2006, Defendants filed an opposition to the Motion to Amend. On or about June 21, 2006, Plaintiffs filed an Answer Brief to Defendants' Motion to Dismiss. (D.I.#99). On or about July 11, 2006, Plaintiffs filed a Motion for Cross Summary Judgment. (D.I. #103). On or about September 14, 2006, Defendants filed a Response to Plaintiffs' Motion for Cross Summary Judgment. (D.I.#115).

5. On or about November 3, 2006, a Notice of Substitution of Counsel was filed on behalf of Deputy Attorney General Stacey Xarhoulakos replacing Deputy Attorney General Lisa Barchi in this litigation. (D.I. #123).

6. On or about December 14, 2006, in a Memorandum Opinion, numerous Plaintiffs were dismissed without prejudice for failure to respond to a Show Cause Order. (D.I. #125). Defendants' Motion to Dismiss was granted in part and denied in part. Plaintiffs' Fourteenth Amendment due process, excessive force, and failure to protect

claims were dismissed. Plaintiff's Motion to Amend was granted in part and denied in part and Plaintiff Wilson was permitted to a retaliation claim against Defendant Deloy. Plaintiffs' Fourteenth Amendment equal protection claim against Defendants Kearney and Taylor in their personal capacities remains. Wilson's Motion for Summary Judgment was denied.

7. On or about December 27, 2006, Defendants filed an Answer to Plaintiffs' Second Amended Complaint. (D.I.#132). On or about January 3, 2007, Plaintiffs filed Interrogatories and Request for Production of Documents. (D.I.##133,134). Counsel is aware that Fed.R.Civ.P. 33(b)(3) and 34(b) require a response to discovery requests within thirty (30) days. However, due to the increase of litigation within the Correction Unit in addition to other responsibilities, counsel is unable to respond within the required time. As previously mentioned, the case at bar involves nine *pro se* inmate plaintiffs whose discovery requests are quite extensive and request information on the entire SCI inmate population. Collecting, researching, and reviewing this information necessitates additional time in which to file a response. Counsel respectfully requests an extension of time of 45 days from the February 5, 2007 date until on or before March 22, 2007, in which to file Defendants' responses to Plaintiffs' discovery requests.

8. This is the first request for an extension of time for filing a response to Plaintiffs' discovery requests.

9. A form of order is attached to this motion that will grant a forty-five day extension from the February 5, 2007 date until on or before March 22, 2007 to file Defendants' responses to Plaintiffs' discovery requests.

WHEREFORE, for the hereinabove reasons, Defendants respectfully request that this Honorable Court grant Defendants request for an extension of time and set the deadline for filing discovery responses on or before March 22, 2007.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
Department of Justice
State of Delaware
Carvel State Office Building
820 North French Street, 6th fl.
Wilmington, DE 19801
(302) 577-8400

Attorney for Defendants

Dated: January 25, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES A. WILSON, et al.,)	
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7.1.1 CERTIFICATION OF COUNSEL

Counsel for the Defendants, Deputy Attorney General Stacey

Xarhoulakos, files this certification in compliance with Rule 7.1.1 of the Local Rules of Civil Procedure and certifies that:

1. Plaintiffs are inmates incarcerated in the Delaware Correctional system at the Sussex Correctional Institution in Georgetown, Delaware and the Delaware Correctional Center in Smyrna, Delaware.
2. The plaintiffs are not able to be reached by telephone and there are nine plaintiffs in two different locations to be contacted. Thus counsel for the defendants has spent no time in attempting to reach an agreement on the subject of the motion for enlargement of time.
3. Accordingly, counsel assumes that the motion is opposed.

DEPARTMENT OF JUSTICE
STATE OF DELAWARE

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
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16.5 CERTIFICATION

In compliance with Local Rule of Civil Procedure 16.5, counsel for the Defendants making the request for an extension of time files this certification and states:

I certify that I have sent a copy of the request for an extension of time to file discovery responses to the defendants.

DEPARTMENT OF JUSTICE
STATE OF DELAWARE

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
Department of Justice
State of Delaware
Carvel State Office Building
820 North French Street, 6TH Fl.,
Wilmington, DE 19801
(302) 577-8400

Attorney for Defendants

Dated: January 25, 2007

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2007, I electronically filed *Defendants Stan Taylor, Rick Kearney and Mike Deloy's Motion for Enlargement of Time to Respond to Plaintiffs' Discovery Requests* with the Clerk of Court using CM/ECF. I hereby certify that on January 25, 2007, I have mailed by United States Postal Service, the document to the non-registered parties on the attached list.

/s/ Stacey Xarhoulakos
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List of Non-Registered Parties

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Jerome Green, Inmate
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